

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOUGLAS PRESTON, ROXANA
ROBINSON, GEORGE SAUNDERS, SCOTT
TUROW, and RACHEL VAIL, individually
and on behalf of others similarly situated,

Plaintiffs,

v.

OPEN AI INC., OPENAI OPCO LLC,
OPENAI GP LLC, OPENAI, LLC, OPENAI
GLOBAL LLC, OAI CORPORATION LLC,
OPENAI HOLDINGS LLC, OPENAI
STARTUP FUND I LP, OPENAI STARTUP
FUND GP I LLC, OPENAI STARTUP FUND
MANAGEMENT LLC, and MICROSOFT
CORPORATION,

Defendants.

JONATHAN ALTER, KAI BIRD, TAYLOR
BRANCH, RICH COHEN, EUGENE
LINDEN, DANIEL OKRENT, JULIAN
SANCTON, HAMPTON SIDES, STACY
SCHIFF, JAMES SHAPIRO, JIA
TOLENTINO, and SIMON WINCHESTER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI OPCO LLC,
OPENAI GP, LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC, OPENAI STARTUP
FUND I LP, OPENAI STARTUP FUND GP I
LLC, OPENAI STARTUP FUND

Consolidated Cases:

Case No. 1:23-cv-08292-SHS-OTW

Case No. 1:23-cv-10211-SHS-OTW

MANAGEMENT LLC, and MICROSOFT
CORPORATION,

Defendants.

**DEFENDANT MICROSOFT CORPORATION'S
MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Paragraph 25 of the Protective Order (ECF 338), Defendant Microsoft Corporation moves for leave to seal portions of its response to Plaintiffs' letter motion to compel inspection of late 2023 data ("Response"), as well as certain exhibits thereto. For the reasons stated below, Microsoft respectfully requests the Court grant Microsoft's Motion. Specifically, Microsoft requests that the highlighted portions of the sealed Response and Exhibits C and D thereto be sealed.

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," this right is not absolute and courts "must balance competing considerations against" the presumption of access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). "The proponent of sealing 'must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). "[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions . . ." *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). "[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings." *Id.*

The Response contains descriptions of confidential documents, including Exhibits C and D, the disclosure of which would unfairly prejudice Microsoft. Exhibits C and D to the Response,

which have been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order, contain highly confidential information about the terms of and ongoing work pursuant to Microsoft’s agreement with OpenAI. *See Ex. A* (Declaration of Lucky Vidmar). Similarly, the Response contains descriptions of Exhibits 1 (ECF 363-1), 3 (ECF 363-3), 5 (ECF 363-5) and 6 (ECF 363-6) to Plaintiffs’ letter motion to compel, which are also confidential documents that have been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order and contain highly confidential information about the terms of and ongoing work pursuant to Microsoft’s agreement with OpenAI. *See id.* Microsoft requests that the highlighted portions of the sealed Response are sealed from the public and Exhibits C and D be sealed in their entirety.

The information Microsoft seeks to seal and redact is the type of information commonly found to warrant sealing. *See Regeneron Pharm., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

For the reasons stated above, and those set forth in the Declaration of Lucky Vidmar, Microsoft respectfully requests that Microsoft’s Motion is granted and that the highlighted portions of the sealed Response are sealed from the public and Exhibits C and D be sealed in their entirety.

Dated: April 3, 2025

Respectfully submitted,

/s/ Jared B. BRIANT

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